

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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RAFAEL REYNOSO ADAMES,

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 03/08/11

Petitioner,

-against-

DALE ARTUS, Superintendent, Clinton
Correctional Facility,

10 Civ. 398 (DAB)
ADOPTION OF REPORT
AND RECOMMENDATION

Respondent.

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DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the January 20, 2011 Report and Recommendation of United States Magistrate Judge Henry Pitman (the "Report"). Judge Pitman's Report recommends that the Petition for a Writ of Habeas Corpus be dismissed as time barred. (Report at 2, 16).¹ The Report further recommends that a certificate of appealability not be issued, and that the Court certify that any appeal would not be taken in good faith. (Report at 16-17.)

"Within fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of the

¹The Court notes that Plaintiff's Opposition to the Motion was timely received by Magistrate Judge Pitman and by Defendant, though it was not docketed until a later date.

report to which no timely objection has been made, so long as there is no clear error on the face of the record. Wilds v. United Parcel Serv., Inc., 262 F.Supp.2d 163, 169 (S.D.N.Y. 2003). “[F]ailure to object timely to a magistrate’s report operates as a waiver of any further judicial review of the magistrate’s decision.” Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008) (quoting Small v. Sec. of HHS, 892 F.2d 15, 16 (2d Cir. 1989)). This rule applies to pro se parties so long as the magistrate’s report “explicitly states that failure to object to the report within [fourteen (14)] days will preclude appellate review...” Small, 892 F.2d at 16.

Despite being advised of the procedure for filing objections in Judge Pitman’s Report, and warned that failure to file objections would waive objections and preclude appellate review, (Report at 17-18), Petitioner has filed no objections to the Report. Nor has any other Party filed objections to the Report.

Having reviewed the Report, and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby ORDERED AND ADJUDGED that the Report and Recommendation of United States Magistrate Judge Henry Pitman, dated January 20, 2011, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety.

For the reasons set forth in the Report, no certificate of appealability shall issue. The Court certifies that any appeal from this Order or from the Report would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The Clerk is directed to close the docket in this matter.

SO ORDERED.

Dated: New York, New York

March 8, 2011

Deborah A. Batts

Deborah A. Batts
United States District Judge